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UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Kevin Whitley
5030 Oak Hollow
Acworth, GA 30058

In re Application of WHITLEY et al
U.S. Application No.: 09/647,028
Int. Application No.: PCT/US99/06429
Int. Filing Date: 24 March 1999
Priority Date: 24 March 1998
For: WIRELESS TELEMETRY METHODS AND
SYSTEMS FOR COMMUNICATING WITH
OR CONTROLLING INTELLIGENT DEVICES

Dear Kevin Whitley:

You are named as a joint inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost set forth in 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you choose to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.


Bryan Tung

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Attorney Docket No.: 36968/176363



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DECISION

This is in response to applicant's "Renewed Petition Under 37 CFR 1.47(a)" filed 26 August 2002, requesting that the present application be accepted for national stage processing without the signature of one of the joint inventors.

BACKGROUND

On 24 March 1999, applicant filed international application PCT/US99/06429, which claimed priority of an earlier United States application filed 24 March 1998. A Demand for international preliminary examination, in which the United States was elected, was filed on 21 September 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 25 September 2000 (24 September 2000 was a Sunday).

On 25 September 2000, applicant filed national stage papers in the United States. The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1), a declaration executed by one of the three joint inventors, and a petition under 37 CFR 1.47(a).

On 08 March 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) along with a Notification of a Defective Oath or Declaration (Form PCT/DO/EO/917), indicating that a properly executed oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 21 November 2001, this Office mailed a decision dismissing the 25 September 2000 petition.

On 29 May 2002, applicant filed a renewed petition under 37 CFR 1.47(a) along with a declaration executed by one of the previously nonsigning inventors.

On 20 June 2002, this Office mailed a decision dismissing the 29 May 2002 renewed petition.

On 26 August 2002, applicant filed the present renewed petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventors, (2) factual proof that the missing joint inventors refuse to join in the application or cannot be reached after diligent effort, (3) the fee set forth in §1.17(i), and (4) the last known addresses of the nonsigning joint inventors.

Applicant has previously satisfied items (1), (3), and (4) above.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, an affidavit or declaration of facts should be submitted which fully describes the exact facts which are relied on to establish that a diligent effort was made. . . . The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

In the present case, the renewed petition states that inventor Kevin Whitley cannot be located. According to the renewed petition, applicant sent a complete copy of the application papers to Whitley on 19 December 2001 (see affidavit of Karen Stark and Exhibit A). The copy of the returned envelope indicates that Whitley could not be reached at his last known address. Furthermore, applicant attempted unsuccessfully to contact Whitley by telephone and through his former employer (see Stark's affidavit). Thus, it can be concluded with reasonable certainty that Whitley cannot be found or reached after diligent effort.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.47(a) is GRANTED.

This application has an international filing date of 24 March 1999 and a date under 35 U.S.C. 371(c) of 29 May 2002.

As set forth in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at the last known address of record and will be published in the *Official Gazette*.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



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